

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

PIERRE HAYNES

PETITIONER

V.

CIVIL ACTION NO.1:06CV330-GHD-JAD

JIM HOOD

RESPONDENT

REPORT AND RECOMMENDATION

The respondent has filed a motion to dismiss this action as time barred under 28 U.S.C. § 2244(d). In the absence of extraordinary circumstances, not present in this case, the petitioner was required to file his petition with this court within one year of the date his conviction became final, with the running of the statute of limitations being tolled during the pendency of properly filed state habeas proceedings.

Haynes pled guilty to armed robbery and was sentenced to a term of twenty-five years with five years suspended in the Circuit Court of Winston County, Mississippi, on October 30, 2002. In 2003 and 2004 he had a motion for post-conviction relief pending in the trial court and then an appeal from denial of the motion pending in the Mississippi Court of Appeals. The Mississippi Court of Appeals affirmed the trial court's denial of the post-conviction motion on December 14, 2004. His federal petition was filed between December 4, 2006, when received by the clerk of this court, and November 28, 2006 when he signed the petition. Given that Haynes waited almost two years after the last Mississippi court action, no careful counting of days needs to be performed to determine that the petition is untimely.

The undersigned recommends that the petition be dismissed with prejudice as untimely.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Petitioner is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Petitioner is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 20th day of March, 2007.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE